

No. 9(1)81-6Lab./15083.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workmen and the management of Haryana Roadways, Gurgaon.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER,  
LABOUR COURT, HARYANA, FARIDABAD

Reference No. 102 of 1981

*between*

SHRI LAL SINGH, WORKMAN AND THE MANAGEMENT OF M/S  
HARYANA ROADWAYS, GURGAON

Shri Bhim Singh Yadav, for the workman.

Shri K. L. Piplani, for the respondent.

#### AWARD

This reference No. 102 of 1980 has been referred to this Court by the Hon'ble Governor of Haryana,—*vide* his order No. ID/GGN/101/80/9195, dated 23rd February, 1981, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between the workman Shri Lal Singh and the management of Haryana Roadways, Gurgaon. The terms of the reference was :—

Whether the termination of service/dismissal of Shri Lal Singh was justified and in order ? If not, to what relief is he entitled ?

After receiving this reference notices were served on the parties who came in the court and gave their pleadings. According to the demand notice, claim statement and rejoinder the case of the claimant is that he joined on 18th September, 1973 as Conductor in the respondent roadways and the respondent issued a illegal and false chargesheet on 17th March, 1977. The claimant replied the chargesheet on which a domestic enquiry was conducted by the respondent in which the respondent violated the principal of natural justice during the enquiry proceedings. The enquiry officer did not inform the workman the date and time of conducting enquiry proceedings. The enquiry officer inclination was pro-respondent. No proper legal show cause was given to the claimant. The show cause notice was illegal and defective. However the claimant replied the same after this the General Manager terminated the services illegally without considering the facts of the case on 22nd July, 1979. The claimant made a appeal against this order to the State Transport Controller, Haryana which was up-held by the authority and so the applicant moved the demand notice. The order of termination passed against the claimant is illegal, mala-fide, wrong and violated the principles of natural justice and he has prayed for his reinstatement with continuity of service and with back wages.

The case of the respondent according to its written statement is that the claimant was appointed on 19th September, 1973 and was dis-continued from service being the junior most on 18th November, 1973. He was given afresh appointment on 10th March, 1974 on purely temporary basis, subject to condition that his services can be terminated at any time without notice. The respondent denied the fabrication of the chargesheet and its illegality. The claimant replied the chargesheet which was found un-satisfactory and the Traffic Manager was appointed as Enquiry Officer. The workman fully participated during the enquiry proceedings and availed the opportunity to cross-examine the prosecution witnesses. He declined to produce the defence when he was given the opportunity

to do so. The enquiry officer found him guilty of charges and the General Manager issued show cause notice, dated 26th May, 1977 to which a reply was received from the claimant and after considering the whole record the General Manager terminated the services on 22nd July, 1977. The claimant was informed by the enquiry officer about the date of enquiry and the timing for conducting the enquiry proceedings,—*vide* letter, dated 21st April, 1977 and the workman came present to participate in the enquiry as stated in the notice and full fledged enquiry was held against the workman and prayed that the reference may be awarded in favour of the respondent.

On the pleadings of the parties, the following issues were framed :—

- (1) Whether a proper and fair domestic enquiry was held by the respondent ?  
If so, to what effect ?
- (2) Whether the termination of services of the workman is proper, justified and in order ? If not, to what relief is he entitled ?
- (3) Relief ?

My findings issue-wise are as under :—

Issue No. 1 :—

Issue No. 1 is whether the proper and fair domestic enquiry was held by the respondent ?

On this issue the representative of the respondent argued that for this purpose the respondent has produced the original enquiry file in the court in which the action was taken by the respondent on the report of Shri Khushi Ram which is on the first page of the enquiry in which it is stated that on 16th February, 1977 Shri Khushi Ram and Ranjeet Singh, Checking Inspectors, accompanied by the General Manager, Haryana Roadways to check the vehicle on the routes in Car No. 6401 and reached Jorasi and checked Bus No. HRG-3060 which was from Ballabgarh to Patodi via Sonna Tawru in which seven passengers dropped from the bus at Jorasi who were without tickets. They were checked by the Inspectors and on checking it was found that the conductor Shri Lal Singh who was on duty on the bus took 30 N.P. per passenger and did not issued the tickets in lieu thereof. In this way he had collected Rs. 2.10 P. for the fare. The Inspector demanded the unpunched tickets and way bill which he refused and mis-behaved with the Inspectors because the conductor was in a drunken position on duty that is why he misbehaved and did not allow to check the bus, on the order of the General Manager. The bus was taken to Patodi Police Station and there, in the presence of the police the unpunched tickets were taken from the conductor and the cash and other tickets were also taken and checked in which Rs. 3.49 P. were excess in the account. As the conductor had taken the alcohol and he was on duty so he was given in the custody of the police. This whole shows the conduct and behaviour of the claimant. After this report of the Checking Inspector the claimant was suspended on 8th March, 1977 and show cause notice Exhibit M-2 was issued to the claimant on which the claimant replied the same as Exhibit M-3 in which the claimant has admitted that he was given in the custody of police on the day of occurrence. He also admitted that I do not know what the Inspector did after that. After receiving the reply the Traffic Manager, Gurgaon was appointed as Enquiry Officer,—*vide* Exhibit M-4 who issued the letter Exhibit M-5 to the claimant for appearing before the Enquiry Officer on 20th April, 1977. After that he again issue a letter to the claimant which is Exhibit M-6 to appear before him on 6th May, 1977. On 6th May, 1977 the proceedings of the enquiry were started in the presence of the workman who has signed the proceedings which is Exhibit M-7 in which Shri Khushi Ram checking inspector made a statement according to his report and he alleged the fraud, mis-behaviour and alcohol taken on duty. The

claimant cross-examined the prosecution witnesses and signed the same. He was also given the opportunity to give his defence in the enquiry in which the claimant as stated on Exhibit M-9 that he do not want to produce any defence in the enquiry and he gave his own statement as Exhibit M-8 denying the whole facts. The enquiry officer prepared the enquiry report which is Exhibit M-10 and submit the same to the General Manager who issued the show cause notice Exhibit M-11 showing the claimants' thirteen other frauds played by him on the same basis in which his increments were stopped, given service censured. The workman replied the show cause notice which Exhibit M-13 denying the whole facts. But he admits in his reply of show cause notice that the claimant was left in the police custody and sent for medical examination where the doctor declared that he had taken no alcohol. But the claimant did not produce any certificate of the doctor whether he had declared that the conductor was taken no alcohol without which it can not be presumed that he was not under the influence of alcohol. The claimant was caught by the two checking inspectors with the General Manager, Haryana Roadways, Gurgaon and the General Manager himself saw the claimant in a intoxication mood that is why he ordered to take the bus at the police station. If the claimant was not under the influence of alcohol he would not have behaved in the manner in which he had behaved in the presence of the General Manager, Haryana Roadways. When he has not spared the highest authority of depot and mis-behaved him and after observing all these things the General Manager ordered to take the bus to the police station, Patodi which was nearest to the place and there the inspectors took the whole belongings of the claimant in the presence of the incharge police station and checked the same in their presence in which they found Rs. 3.49P. excess to the accounts of the tickets. These all things shows that the claimant was under the influence of althol and mis-behaved the superior officers and issue no tickets to seven passengers after getting the money from them for the fare of the bus. It is a very serious charge against a public servant to take alcohol at the duty period. Even on this charge his services can not be retained for further consideration. The other charge he mis-behaved the superior officers and embezzled the Government money by not issuing the tickets by his confersion and admission in his statement and in his replies clears the position and the enquiry officer rightly reported to the General Manager. He was found guilty according to enquiry report and after going through the enquiry report, and the whole proceedings of the enquiry against the workman and reply of the show cause notice, the General Manager had rightly made the orders of termination. The claimant had not specifically mentioned in his demand notice or claim statement of the violence of the natural justice in the enquiry proceedings by the Enquiry Officer. Without a specific allegation on the enquiry officer what can be seen on the charge of the claimant. The workman had given all opportunity by the Enquiry Officer for cross examine the prosecution witness and give his own defence. The enquiry was proper and fair without objection raised by the workman at the time of enquiry.

The representative of the workman argued that as alleged by the respondent that two checking inspectors Shri Ranjeet Singh and Khushi Ram checked the bus at Jorasi bus stand. The respondent had produced only one witness out of the three persons who were on checking on that day. One witness Shri Khushi Ram has come before the enquiry officer and made the statement. The respondent had not produced the other witness. The other witnesses should have also been produced in the enquiry to prove the charges and the main witnesses were not produced willfully which is against the law. He has cited PLR-1967-page 119 Punjab and Haryana High Court for withholding the main witness in the enquiry. The book was not given to me so I cannot give the citation properly here. He further argued that the claimant was not informed about the enquiry proceedings. The letter Ex. M-5 and M-6 are not admitted by the claimant in his statement. He further argued that these letters were issued from the office but they were not sent to the claimant for informing him. There is no proof with the respondent to show in the court that these letters were received by the workman at any stage. He further

argued that reply Ex. M-3 of the claimant was not considered by the Enquiry Officer for preparing the enquiry report. The inspection report which was prepared by the checking inspectors was not produced before the enquiry officer which is admitted by the witnesses of the respondent MW-1. The proceedings were written by the clerk who has not signed this proceedings which is also illegal. These proceedings were not written by the enquiry officer which shows that the enquiry proceedings were recorded in the absence of the enquiry officer which is also illegal. The prosecution should have produced the passengers who had given the money to the claimant, but no passenger was produced before the enquiry officer to prove this fact. The unpunched tickets were taken by the inspectors themselves without knowledge of the claimant. The claimant was illegally handed over to the police and with the force of the police his tickets and bag with cash was taken from him by force and the inspectors took the unpunched tickets to prepare their case. Otherwise there were no passenger without tickets in the bus on that day. It was all done due to enmity with the claimant due to some demand from them, which is not fulfilled by the claimant and so he was checked and false case was prepared against him. He further argued that the unpunched tickets in the file are not got exhibited by the respondent because they are not genuine one. It was all made up story and the enquiry was only a DRAMA to remove the claimant from service and no proper and fair enquiry was held against the workman.

After hearing the arguments of both the parties and going through the file of enquiry proceedings produced by the respondent, I am of the view that there is nothing wrong in the enquiry proceedings. The workman was given charge sheet. He replied the same, the Enquiry Officer was appointed, no objection on the enquiry officer appointment raised, no objection during the course of enquiry proceedings, crossed the prosecution witness closed his evidence without giving any defence and giving in writing that he did not want to produce any defence witness. After this show cause notice was given, he replied the same and the General Manager considered on these facts before making the orders. The representative of the workman had not given any specific objection in his claim statement or anywhere by which I cannot say that the same has been done against the principles of natural justice. So in this condition I hold that proper and fair enquiry was held by the Enquiry Officer and this issue is decided in favour of the management and against the workman.

#### Issue No. 2 :

Issue No. 2 is as per reference ?

The representative of the respondent argued that after a proper and fair enquiry in which the claimant was found guilty of the charges of embezzlement, fraud, mis-conduct with the superior officer, the General Manager had rightly terminated the services of the claimant according to law and rules and there is no un-justification in this order. He argued that the workman was terminated on 22nd July, 1977 and he raised his demand on 10th October, 1980 after a lapse of three years which he has not explained anywhere except in his claim statement wherein he had stated that he made an appeal before the State Transport Controller, Haryana against this order which was upheld. He has not given any date when the appeal was offered and on what date the authority upheld the order. The claimant had concealed the fact and not explained his position of lapse and laches which was very essential for the claimant to explain the delay in filing the demand notice. He argued that the claimant was habitual in doing the fraud and embezzlement of the Government money on which he got the punishment in different ways from the day of his appointment till the day of enquiry. He was punished thirteen times before this enquiry for the same type of guilt and this time the General Manager who was also with the checking staff and observed all seen of the claimant, made a correct order to terminate the claimant on a very serious charge of his intoxication mood on duty. When he can mis-behave the officer whom he knows that they are the superior officers then he can also mis-behave the public at large which can not be tolerated by the administrator, who was the incharge of all such complaints. So the orders were quite justified and proper.

The workman's representative argued on this issue that the orders of the General Manager are not good in the eye of law as nothing has been proved against the claimant in the enquiry. The enquiry was only a show to terminate the claimant on the false charges prepared by the respondents. After this order the workman went in appeal before the State Transport Controller, Haryana which remained pending for a long time and the claimant was not heard even in appeal and the orders were upheld in appeal and after that the claimant had come to give the demand notice. So it is not a fault of the claimant for this delay, but it is the fault of the Government not to decide the cases and hear the aggrieved person at a proper time. So the delay can not be considered in the eye of law.

After hearing the arguments of both the sides and going through the file and deciding the first issue, I am of the view that the authority is justified in passing such orders and the orders of termination is proper. The claimant is not entitled to any relief in the above circumstances. No order as to costs.

This be read an answer to this reference.

Dated : The 5th December, 1981.

HARI SINGH KAUSHIK,

Presiding Officer,  
Labour Court, Haryana, Faridabad.

Endorsement No. 3485, dated 18th December, 1981

Forwarded (four copies) to the Commissioner & Secretary to Government of Haryana, Labour & Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947, with the request that acknowledgement of the above said award may please be sent within week's time.

HARI SINGH KAUSHIK,  
Presiding Officer,  
Labour Court, Haryana, Faridabad.

No. 9(1) 81-6Lab. 15094. — In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s Indian Express, 186-B, Industrial Area, Chandigarh.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER,  
LABOUR COURT, HARYANA, FARIDABAD

Reference No. 489 of 1980

*between*

SHRI B. P. SHARMA, WORKMAN AND THE RESPONDENT MANAGEMENT  
OF M/S. INDIAN EXPRESS, 186-B, INDUSTRIAL AREA, CHANDIGARH

*Present :*

None for the workman.

Shri Raj Kumar Goel, for the respondent management.

## AWARD

This reference No. 489 of 1980 has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID/HSR/71-80/53492, dated 14th October, 1980, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Shri B.P. Sharma, workman and the respondent management of M/s. Indian Express, 186-B, Industrial Area, Chandigarh. The terms of the reference was :—

Whether the termination of service of Shri B. P. Sharma, was justified and in order? If not, to what relief is he entitled?

After receiving this reference, notices were issued to the parties. They put these appearance in the court and filed the pleadings. According to the claim statement the case of the claimant is that he was working as part time (stringer) correspondent for the last two years and his services were terminated on 20th July, 1979 with a order that his services are no longer required. According to him this type of termination come under the retrenchment and without compliance of mandatory provisions of section 25-F of the Industrial Disputes Act, the termination is not justified and in order. So he is entitled for reinstatement with full back wages and continuity of service.

According to the written statement, the case of the respondent is that the claimant does not come under the definition of journalist under the condition of service and claimant does not full fill the condition of a workman. It is admitted that he claimant was stringer and a corresspondent, so the claimant is not entitled for any relief. After filling the written statement on 29th November, 1981 the workman did not appear in the court on 15th December, 1980 and *ex parte* proceedings we ordered against him on that day. The claimant come present in the court on 16th February, 1981 on that day no body was present on behalf of the respondent. So the notice was sent to the respondent to come present in the court on 3rd April, 1981. On 3rd April, 1981 the workman was absent so the case was fixed for evidence of the management for 21st April, 1981. On 21st April, 1981 none of the parties appeared before the court and the award was reserved in the absence. But after I took the charge as Presiding Officer, I again sent the notices to the parties for 21st July, 1981. On that day both the parties came present and the case was fixed for 21st August, 1981 for the arguments on *ex parte* application of the workman but on the next date of hearing, the representative of the respondent came present and none for the workman came in the court and the management stated that they did not want to produce any evidence in this reference as the workman has compromised in one of his case in the court at Chandigarh and they have no dispute with the workman. In these circumstances, I ordered to reserve the award in this reference on 21st August, 1981. The workman came present before me on 21st September, 1981 and filed one application on which I ordered to come present on 19th October, 1981 at Ambala for further hearing of the reference and also ordered to issue notice to the respondent for this date. On 19th October, 1981 the respondent representative came present, but the workman did not appear in the court inspite of waiting the workman up till evening and advised the respondent to appear on 9th November, 1981 to wait for the workman or any application of the workman if filed during this period. But even on 9th November, 1981 the workman did not turn up to pursue his case. In the above circumstances, I feel that after so many opportunities is given to the workman is not interested to pursue this reference and there is no dispute between the parties. No order as to costs.

This be read in answer to this reference.

Dated 12th December, 1981

HARI SINGH KAUSHIK,

Presiding Officer,

Labour Court, Haryana, Faridabad.

Endorsement No. 3474, dated 18th December, 1981

Forwarded (four copies) to the Commissioner & Secretary to Govt. of Haryana, Labour & Employment Deptt., Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,

Presiding Officer,

Labour Court, Haryana, Faridabad.